

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

TERRY BRADER AKA TERRY G. §
BRADER and TERRY'S SEAWORTHY §
MARINE SUPPLY, LLC, § Case No. 24-cv-00173
§
Plaintiffs, §
§
v. § ON REMOVAL FROM CAUSE NO.
§ 24-0118 ARANSAS COUNTY, TEXAS
§
§
AMERICAN EXPRESS NATIONAL §
BANK, §
§
§
Defendant.

NOTICE OF REMOVAL OF DEFENDANT AMERICAN EXPRESS NATIONAL BANK

PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. §§ 1441 and 1446, defendant American Express National Bank (“American Express”), by and through its counsel, hereby removes the action entitled *Terry Brader aka Terry G. Brader and Terry's Seaworthy Marine Supply, LLC v. American Express National Bank*, Case No. 24-0118, pending in the District Court for the County of Aransas, Texas (156th Judicial District) (the “Action”), to the United States District Court for the Southern District of Texas on the following grounds:

1. Removal Is Timely. Plaintiffs Terry Brader and Terry's Seaworthy Marine Supply, LLC (the “Brader Plaintiffs”) previously filed and served two previous iterations of its state-court petition (an Original Petition and Amended Petition).¹ Neither the Plaintiffs’ Original nor First Amended Petitions included any federal claims.² On July 12, 2024, Plaintiff filed/served its Second Amended Petition against American Express, which added – for the first time – a federal

¹ **Ex. A** (State Court Pleadings), at pp. 55-146.

² *Id.*

Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq* claim (the “FDCPA Claim”).³ This Notice of Removal is filed, pursuant to 28 U.S.C. § 1446(b), within 30 days of American Express’s receipt of service of the Second Amended Petition, and within one year after “commencement of the action” in state court. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process and pleadings filed in the Action are attached hereto as **Exhibit A**. A defendant may remove a cause of action that is added as part of an amended version of a complaint. 28 U.S.C. § 1446(b)(3); *Mumfrey v. CVS Pharmacy, Inc.*, 719 F.3d 392, 400 (5th Cir. 2013) (“The removal clock was thus not triggered until CVS received a copy of an amended pleading, motion, order, or other paper from which it was first ascertainable that the case was removable.”) (internal quotations omitted); *Badaiki v. Schlumberger Holdings Corp.*, No. 4:20-CV-2216, 2020 WL 8515066, at *6 (S.D. Tex. Dec. 15, 2020), report and recommendation adopted, 512 F. Supp. 3d 741 (S.D. Tex. 2021) (holding that defendants “had 30 days from the Amended Petition,” which – for the first time – alleged federal claims, “to remove the case to federal court”).

2. This Court Has Federal Question Jurisdiction Over the Action. The Action is a civil action over which this Court has original jurisdiction under 28 U.S.C. § 1331 and is one that may be removed to this Court by American Express pursuant to the provisions of 28 U.S.C. § 1441. Pursuant to 28 U.S.C. § 1331, original jurisdiction of the district courts includes jurisdiction over “all civil actions arising under the Constitution, laws, or treaties of the United States.” “An action may ‘arise under’ a law of the United States if the plaintiff’s right to relief necessarily turns on construction of federal law.” *Bright v. Bechtel Petroleum, Inc.*, 780 F.2d 766, 769 (1986) (citing *Franchise Tax Bd. of Cal. v. Constr. Laborer’s Vacation Trust*, 463 U.S. 1, 9 (1983)). Stated differently, claims “arise under” federal law when a “well-pleaded complaint establishes . . . that

³ *Id.* at pp. 13-14 (the FDCPA Claim is housed within Count XI).

the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law, in that federal law is a necessary element of one of the well-pleaded . . . claims." *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 808 (1988) (quoting *Franchise Tax Bd.*, 463 U.S. at 13, 27-28) (internal quotation marks and citations omitted). Here, Plaintiff includes a claim for an alleged violation of the federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA"), which necessarily arises under federal law. Therefore, this Court has removal jurisdiction over this Action under 28 U.S.C. § 1331 because Plaintiff's FDCPA claim arises under the laws of the United States.

3. Consent Is Not Necessary. Defendant is the only named defendant in this action. Accordingly, consent of removal is not necessary and removal is proper pursuant to 28 U.S.C. 1446(a) & (b).

4. Venue Is Proper In This Court. This Court is the proper district court for removal because the District Court for the County of Aransas, Texas (156th Judicial District) is located within the United States District Court for the Southern District of Texas. See 28 U.S.C. § 1441(a).

5. Notice Will Be Effected. Pursuant to 28 U.S.C. § 1446(d), this Notice of Removal shall be given to adverse parties and a duplicate copy of this Notice of Removal, without exhibits, shall be filed in the Action.

6. American Express has complied with 28 U.S.C. § 1446(a) and Local Rule 81. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 81 copies of all process, pleadings, and orders served upon Defendant related to this action are attached as exhibits in the following manner:

Exhibit A: All process and pleadings filed in this Action, as well as any Orders signed by the State Court Judge

Exhibit B: Copy of the Docket Sheet

Exhibit C: A list of all counsel of record, including addresses, telephone numbers, and parties represented

Exhibit D: Index of all matters being filed

Dated: August 5, 2024

By: /s/ Lakshmi Achari

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**Attorney for Defendant American Express
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served by regular mail and/or electronic transmission on August 5, 2024 to all parties of record.

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/s/ Lakshmi Achari

Lakshmi Achari